

SUFFOLK COUNTY
PLANNING FEDERATION
AND THE
AMERICAN PLANNING
ASSOCIATION

Planning Basic Training

County Referrals

October 30, 2002

H. Lee Dennison Bldg.

COUNTY REFERRALS

General Municipal Law
Subsections 239-1, 239-m, 239-n

Suffolk County Administrative
Code Article XIV Subsections
A-14 - 14 to A14 - 24



COUNTY PLANNING
AGENCY

- The County Legislative Body determines who the "County Planning Agency" is for purposes of General Municipal Law 239-m and 239-n review.
- County Planning Board or Commission
- County Planning Department
- County Planning Director or Commissioner
- Others as designated by the County Legislative Body



A County Planning Board is a Public Body

- May not conduct business without a quorum present
- Subject to the Open Meeting Law
 - Notice to the media
 - Notice to the public



Quorum: Must be at least a majority of the full membership of the board, including any absences or vacancies

Type of Actions Referred

- GML Subsection 239-M (Mandatory)
 - Comprehensive plan
 - Adoption or amendment of Zoning
 - Use or Area Variances
 - Special use permits
 - Site plans
 - Other Authorizations under Zoning Ordinance or Local Law
 - Moratoria



Counties have the option of requiring referral of subdivisions under Municipal law Subsection 239-n

Refer the Action if it applies to Real Property within 500 feet of:

- Municipal Boundary
- Boundary of State or County Park or Recreation Area
- R-O-W of State or County Road
- R-O-W of County-Owned Stream or Drainage Channel
- Boundary of State, County, or Federally owned Land
- Boundary of a Farm Operation that is in a State Agricultural District (not in Suffolk)
- The Atlantic Ocean, Long Island Sound, any bay or estuary (Suffolk County)
- Designated Pine Barrens Zone (only Suffolk County)
- All proposed condominiums in (only Suffolk County)
- Within one mile of an airport (only Suffolk County)

Some Items Need Not be Referred

- Interpretations by the Zoning Board of Appeals
- Items which have been exempted by agreement between the County planning agency and the referring body



REFERRAL AGREEMENTS

- The County and Referring Body may enter into an agreement to exempt certain actions from county review that are of local rather than County concern.



Typical Examples:

- Setback Variances for accessory apartments
- Dimensional variances for fences
- Site Plan Review for a change in tenant where modification of the building footprint is less than 10%
- Sign variances where the sign is not located on a State or County Road
- Site Plan Review (Suffolk County)

Form of Referral Letter for Proposed Subdivision

Suffolk County Planning Commission
PO Box 4100
Barnstable, NY 11700-0100

Attention: Andrew Furlong, AICP, Principal Planner
Subdivision Review Division

Gentlemen:

Pursuant to Section A14-2A, Suffolk County Administrative Code, the Planning Board hereby refers the following proposed subdivision to the Suffolk County Planning Commission:

MAP OF: _____ Municipality _____
S.C.D.P.N. Type Map No. _____ Zoning _____
S.C. Tax Map No. _____
Major Subdivision _____ Minor Subdivision _____
Name and Address of Applicant or Agent _____

MATERIAL SUBMITTED:
Preliminary Plat (1 copy) _____ Road Profile (1) _____ Drainage Plans (1) _____
Topographical Map (1) _____ Grading Plan (1) _____ Site Plan (1) _____
Other materials (specify and give number of copies) _____

REMARKS:

PROJECT LOCATED WITHIN THE SUFFOLK COUNTY PLANNING REVIEW ZONE: (Yes) (No)

SEQA STATUS:
• The project is an (1) Subdivided Type (2) Type III Action
• A (Negative Declaration) (Positive Declaration) (Demonstration of Non-Significance) has been adopted by the Planning Board.
• EIS statement enclosed: (Yes) (No)

THE UNDERSIGNED HAS RECEIVED APPROVAL FROM THE S.C. DEPT. OF HEALTH (Date) (No)

COMMENTS: _____

Very truly yours,

-

Sight Distance Vs. Traffic Speed

Municipal Benefits of Referral

- Professional assistance provided to local boards
- County planning board may be more able to identify possible intermunicipal impacts
- Correct legal procedure is followed, better preserving the decision of local boards
- County planning boards can recommend needed - but possibly controversial - modifications or disapproval's



Referral of the Full Statement

- Full Statement Includes:

Local Requirements
• All materials required by and submitted to the referring municipal body as an application on a proposed action



Full statement includes text of zoning being amended or adopted



- Completed local application form
- Environmental Information (SEQRA)
- Agricultural Information (Ag Data Statement)

Full Statement

Contains SEQR Information

Includes the completed environmental assessment form (EAF) as well as any other materials required by the referring body to make a determination of significance.

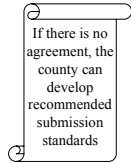
The determination of significance does not have to be part of the full statement

Environmental
Assessment Form

Full Statement



- The County Planning Agency and the Referring Body (usually a local planning board or ZBA) may draw up an agreement to add more required material to the full statement



For example:

- A County Referral Form
- The Zoning District in which the property is located
- A Copy of Local Comment or Review

Agricultural Data Statement

Submit if the application is for:

- Site Plan
- Use Variance
- Special use permit
- Subdivision

If the property involved in the application is:

- within a state agricultural district containing a farm operation, OR
- on property with boundaries within 500' of a farm operation located in a state ag district

Ag Data Statement

- Name & Address of Applicant
- Name & Address of landowners within Ag District
- Location of farm operation(s)
- Map showing project & farm operation(s)

Town Law Subsection 283-A
Village Law Subsection 7-739

Full Statement

A Full statement is “received” by the County in accordance with the rules & regulations of the County planning agency with respect to person, place and period of time for submission



No County Rules?
Then “receipt” occurs on the day the Clerk of the County Planning Board receives the referral by hand, or date postmarked



No required delivery by hand or delivery more than 12 Calendar days before the meeting



Two Day Rule

After thirty days, (45 days in Suffolk County) the referring body may act by a simple majority vote if they have not received a county report.



However, a report that arrives at the local level after the 30th (45th) day, but at least two days before the meeting at which the final decision is made, has the same effect as one made within the original 30 (45) day review period.

County Recommendation on the Proposed Action

- Approval
- Modification
- Disapproval
- No significant county-wide or inter-community impact




County recommendation
must include reasons for
the recommendation

[illegible]




Supermajority Rule

If the County planning board recommends disapproval of the application, or approval with modification,



The referring body may only act contrary to that recommendation by a majority plus one vote

May a referring body condition its final approval on the County's positive recommendation?



A referring body may not take an early vote on an action and condition it on the county planning agency's subsequent positive recommendation.



COUNTY

If the changes are substantial, it should be referred again to the county planning agency



COUNTY OF SUFFOLK

DEPARTMENT OF
PLANNING

BRADLEY J. GARNER
SOUTHWEST COUNTY EXECUTIVE

Received 10 May 2006
 Accepted 10 May 2006
 Available online 10 May 2006

January 1998

Pharmacy School
University of Illinois

By: Subdivision
 No: Tax Map #
 No: E.C. Planning District #

Cardiac

The staff has examined the proposed subdivision map entitled, "SUBDIVISION NAME" bearing the stamped date of DATE. Comparing this map with the one that was previously referred to the Commission, the staff did not find any substantial differences between the two maps.

It is the policy of the Commission not to assign any rating that it has previously established to those countries exhibiting differences.

Summarily,

Thomas W. AACP

Andrew T. Felling, SET
Principal Planner

APPENDIX

How Counties can Encourage Referrals

- Provide forms or guidance documents for local boards
- provide checklists of items to be sent
- provide clear deadlines
- upon receipt of the application, perform administrative review and immediately notify the referring board if the application is not complete
- consider holding special “meetings” to accommodate urgent local matters
- Distribute copies of General Municipal Law subsection 239-1, m, n



How Counties can encourage referrals

Don't confuse recommendations relating to the “inter-community and county-wide considerations” listed in General Municipal Law Subsection 239-1 with other more general advise.

Do comment on:

- Impact on traffic
- Impact on County or State institutions
- Protection of Community character
- Impact on Community appearance
- Impact on drainage & community facilities
- Consideration of official development policies
- Effect on public convenience, governmental efficiency, community environment



Consequences of Non-Referral

Failure to refer an action subject to Subsection 239-m or Subsection 239-n review may invalidate the municipal action



Board
Action



Court

Andrew P. Freleng, AICP
Principal Planner, Suffolk County Department of Planning
Phone:(631)853-5191 E-Mail:andrew.freleng@co.suffolk.ny.us

James F. Gesualdi, Esq., AICP
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Some Graphics from "And on the 8th day", Falcon
Press, Philadelphia, PA, 1961. Richard Hedman &
Fred Bair Jr.

§ 239-l. Coordination of certain municipal zoning and planning actions; legislative intent and policy.

1. Definitions. For the purposes of this section and sections 239-m and 239-n of this article, the following terms shall apply:
 - (a) "County planning agency" means a county planning board, commission or other agency authorized by the county legislative body to review proposed actions referenced for inter-community or county-wide considerations subject to the provisions of this section, and sections 239-m and 239-n of this article.
 - (b) Regional planning council means a regional planning board or agency established pursuant to the provisions of this chapter.
2. Intent. The purposes of this section, sections 239-m and 239-n of this article shall be to bring-pertinent Inter-community and county-wide planning, zoning, site plan and subdivision considerations to the attention of neighboring municipalities and agencies having Jurisdiction. Such review may include inter-community and county-wide considerations in respect to the following:
 - (a) compatibility of various land uses with one another;
 - (b) traffic generating characteristics of various land uses in relation to the effect of such traffic on other land uses and to the adequacy of existing and proposed thoroughfare facilities;
 - (c) impact of proposed land uses on existing and proposed county or state institutionally or other uses;
 - (d) protection of community character as regards predominant land uses, population density, and the relation between residential and nonresidential areas;
 - (e) drainage;
 - (f) community facilities;
 - (g) official municipal and county development policies, as may be expressed through comprehensive plans, capital programs or regulatory measures; and
 - (h) such other matters as may relate to the public convenience, to governmental efficiency, and to the achieving and maintaining of a satisfactory community environment
3. Review considerations. In no way shall the review of inter-community and county-wide considerations pursuant to the provisions of this section, or pursuant to sections 230-m and 239-n of this article, preclude a county planning agency or a regional planning council from making informal comments, or supplying such technical assistance as may be requested by a municipality.

§ 239-m. Referral of certain proposed city, town and village planning and zoning actions to the county planning agency or regional planning council; report thereon; final action.

1. Definitions. As used herein:
 - (a) The term "proposed" as used in subparagraphs (ii) and (iii) of paragraph (b) of subdivision three of this section shall be deemed to include only those recreation areas, parkways, thruways, expressways, roads or highways which are shown on a county comprehensive plan adopted pursuant to section two hundred thirty-nine-d of this article or adopted on an official map pursuant to section two hundred thirty-nine-e of this article.
 - (b) The term "referring body" shall mean the city, town or village body responsible for final action on proposed actions subject to this section.
 - (c) The term "full statement of such proposed action" shall mean all materials required by and submitted to the referring body as an application on a proposed action, including a completed environmental assessment form and all other materials required by such referring body in order to make its determination of significance pursuant to the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations. When the proposed action referred is the adoption or amendment of a zoning ordinance or local law, "full statement of such proposed action" shall also include the complete text of the proposed ordinance or local law as well as all existing provisions to be affected thereby, if any, if not already in the possession of the county planning agency

GENERAL MUNICIPAL LAW

or regional planning council. Notwithstanding the foregoing provisions of this paragraph, any referring body may agree with the county planning agency or regional planning council as to what shall constitute a "full statement" for any or all of those proposed actions which said referring body is authorized to act upon.

- (d) The term "receipt" shall mean delivery of full statement of such proposed action, as defined in this section, in accordance with the rules and regulations of the county planning agency or regional planning council with respect to person, place and period of time for submission. In no event shall such rule or regulation define delivery so as to require in hand delivery or delivery more than twelve calendar days prior to the board or county planning agency's or regional planning council's meeting date. In the absence of any such rules or regulations, "receipt" shall mean delivery in hand or by mail to the clerk of the county planning agency or regional planning council. Where delivery is made in hand, the date of receipt shall be the date of delivery. Where delivery is made by mail, the date as postmarked shall be the date of delivery. The provisions of this section shall not preclude the rules and regulations of the county planning agency or regional planning council from providing that the delivery may be a period greater than twelve days provided the referring body and the county planning agency or regional planning council agree in writing to such longer period.
- 2. Referral of proposed planning and zoning actions. In any city, town or village which is located in a county which has a county planning agency, or, in the absence of a county planning agency, which is located within the jurisdiction of a planning agency or regional planning council duly created pursuant to the provisions of law, each referring body shall, before taking final action on proposed actions included in subdivision three of this section, refer the same to such county planning agency or regional planning council.
- 3. Proposed actions subject to referral.
 - (a) The following proposed actions shall be subject to the referral requirements of this section, if they apply to real property set forth in paragraph (b) of this subdivision:
 - (i) adoption or amendment of a comprehensive plan pursuant to section two hundred seventy-two-a of the town law, section 7-722 of the village law or section twenty-eight-a of the general city law;
 - (ii) adoption or amendment of a zoning ordinance or local law;
 - (iii) issuance of special use permits;
 - (iv) approval of site plans;
 - (v) granting of use or area variances
 - (vi) other authorizations which a referring body may issue under the provisions of any zoning ordinance or local law.
 - (b) The proposed actions set forth in paragraph (a) of this subdivision shall be subject to the referral requirements of this section if they apply to real property within five hundred feet of the following:
 - (i) the boundary of any city, village or town; or
 - (ii) the boundary of any existing or proposed county or state park or any other recreation area; or
 - (iii) the right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway; or
 - (iv) the existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines; or
 - (v) the existing or proposed boundary of any county or state owned land on which a public building or institution is situated; or
 - (vi) the boundary of a farm operation located in an agricultural district, as defined by article twenty-five-AA of the agriculture and markets law, except this subparagraph shall not apply to the granting of area variances.
 - (a) The county planning agency or regional planning council may enter into an agreement with the referring body or other duly authorized body of a city, town or village to provide that certain proposed actions set forth in this subdivision are of local, rather than inter-community or county-wide concern, and are not subject to referral under this section.
- 4. County planning agency or regional planning council review of proposed actions; recommendation, report.
 - (a) The county planning agency or regional planning council shall review any proposed action referred for inter-community or county-wide considerations, including but not limited to those considerations identified in section two hundred thirty-nine-l of this article. Such county planning agency or regional planning council shall recommend approval, modification, or disapproval, of the proposed action, or report that the proposed action has no significant county-wide or inter-community impact.
 - (b) Such county planning agency or regional planning council, or an authorized agent of said agency or council, shall have thirty days after receipt of a full statement of such proposed action, or such longer period as may have been agreed upon by the county planning agency or regional planning council and the referring body, to report its

recommendations to the referring body, accompanied by a statement of the reasons for such recommendations. If such county planning agency or regional planning council fails to report within such period, the referring body may take final action on the proposed action without such report. However, any county planning agency or regional planning council report received after thirty days or such longer period as may have been agreed upon, but two or more days prior to final action by the referring body, shall be subject to the provisions of subdivision five of this section.

5. Extraordinary vote upon recommendation of modification or disapproval. If such county planning agency or regional planning council recommends modification or disapproval of a proposed action, the referring body shall not act contrary to such recommendation except by a vote of a majority plus one of the members thereof.
6. Report of final action. Within thirty days after final action, the referring body shall file a report of the final action it has taken with the county planning agency or regional planning council. A referring body which acts contrary to a recommendation of modification or disapproval of a proposed action shall set forth the reasons for the contrary action in such report.

§239-n. Referral of certain proposed subdivision plats to the county planning agency or regional planning council; report thereon; final action.

1. Definitions. As used herein:
 - (a) The term "proposed" as used in subparagraphs (ii) and (iii) of paragraph (a) of subdivision three of this section shall be deemed to include only those recreation areas, parkways, thruways, expressways, roads or highways which are shown on a county comprehensive plan, adopted pursuant to subdivision seven of section two hundred thirty-nine-d of this article, or shown on an official map adopted pursuant to section two-hundred thirty-nine-e of this article.
 - (b) The term "undeveloped plat" shall mean those plats already filed in the office of the clerk of the county in which such plat is located where twenty percent or more of the lots within the plat are unimproved unless existing conditions, such as poor drainage, have prevented their development.
 - (c) The term "referring body" shall mean the city, town or village body authorized by a municipal legislative body to approve preliminary or final plats or to approve the development of undeveloped plats and/or plats already filed in the office of the county clerk.
2. Referral of proposed plats. In any city, town or village which is located in a county which has a county planning agency authorized by the county legislative body to review preliminary or final plats or to approve the development of undeveloped plats, the clerk of the municipal planning agency, upon receipt of application for preliminary and/or final approval of a subdivision plat or proposal to develop an undeveloped plat and/or plats already filed in the office of the county clerk, shall refer certain of such plats to the county planning agency. In the absence at a county planning agency, the county legislative body may authorize a regional planning council whose geographic area includes the county, to perform the review functions prescribed herein.
3. Plats subject to referral.
 - (a) The following applications for approval of preliminary or final plats and undeveloped plats shall be subject to the referral requirements of this section, if the application applies to real property within five hundred feet of the following:
 - (i) the boundary of any city, village, or town; or
 - (ii) the boundary of any existing or proposed county or state park or other recreation area; or
 - (iii) the right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway; or
 - (iv) the existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines; or
 - (v) the existing or proposed boundary of any county or state owned land on which a public building or institution is situated; or
 - (vi) the boundary of a farm operation located in an agricultural district, as defined by article twenty-five-AA of the agriculture and markets law.
 - (b) The county planning agency or regional planning council may enter into an agreement with the referring body or other duly authorized body of a city, town or village to provide that certain proposed plats are of local, rather than inter-community or county-wide concern, and are not subject to referral under this section.
4. County planning agency or regional planning council review of proposed plats; recommendation, report

GENERAL MUNICIPAL LAW

- (a) The county planning agency or regional planning council, when authorized by the county legislative body, shall review any referred plat for inter-community or county-wide considerations, including but not limited to those considerations identified in section two hundred thirty-nine-l of this article. The county planning agency or regional planning council may adopt such rules and regulations as are necessary to perform such function. Such county planning agency or regional planning council shall recommend approval, modification, or disapproval, of such plat, or report that such plat has no significant county-wide or inter-community impact.
 - (b) Such county planning agency or regional planning council, or an authorized agent of said agency or council, shall have thirty days after receipt of a preliminary or final plat or proposal to develop an undeveloped plat, or such longer period as may have been agreed upon by the county planning agency or regional planning council and the referring body, to report its recommendations to the referring body, accompanied by a statement of the reasons for such recommendations. If such county planning agency or regional planning council fails to report within such period, the referring body may take final action on the referred plat without such report. However, any county planning agency or regional planning council report received after thirty days or such longer period as may have been agreed upon, but two or more days prior to final action by the referring body, shall be subject to the provisions of subdivision five of this section.
- 5. Extraordinary vote upon recommendation of modification or disapproval. If such county planning agency or regional planning council recommends modification or disapproval of a referred plat, the referring body shall not act contrary to such recommendation except by a vote of a majority plus one of all the members thereof.
 - 6. Report of final action. Within thirty days after final action, the referring body shall file a report of the final action it has taken with the county planning agency or regional planning council. A referring body which acts contrary to a recommendation of modification or disapproval of a proposed action shall set forth the reasons for the contrary action in such report.
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ARTICLE XIV, Department of Planning**§ A14-1. Organization of Planning Commission. [Derived from Charter Sec. 1307]**

The Planning Commission shall hold an organizational meeting not later than the 15th day of February of each year. At such meeting, the Commission shall select from its own members a Chairman and such other officers as it may deem proper.

§ A14-2. Adoption of rules of proceedings by Planning Commission. [Derived from Charter Sec. 1308; amended 6-26-2001 by L.L. No. 10-2001]

NOTE: Local Law No. 10-2001 also provided as follows:

Section 1. Legislative intent.

This Legislature hereby finds and determines that actions by the Suffolk County Planning Commission have enormous impact on the land use policies of Suffolk County; the aesthetics of Suffolk County; the quality of life in Suffolk County; the public health of the residents of Suffolk County; environmental protection in Suffolk County; preservation of Suffolk County's groundwater; the air quality in Suffolk County; and the protection of Suffolk County's air, water and land resources.

This Legislature further finds and determines that formal records of Planning Commission proceedings should be maintained to allow an informed, intelligent and public debate of issues of such a magnitude.

Therefore, the purpose of this law is to require the Suffolk County Planning Commission to maintain verbatim minutes of its meetings.

Section 3. Applicability.

This law shall apply to all actions and meetings occurring on or after the effective date of this law.

- A. The Planning Commission shall by resolution adopt at its organizational meeting rules to govern Commission proceedings. A copy of the rules and any amendments thereto shall be filed in the office of the County Executive, the office of the Clerk of the County Legislature and with the County Clerk and town and village clerks, and the Commission shall make copies of such rules and any amendments thereto available to the public.
- B. The Planning Commission shall maintain verbatim minutes of all Planning Commission proceedings and meetings (i.e., all regular meetings, special meetings, committee meetings and sub-committee meetings of the Planning Commission) as the official minutes of the Planning Commission, and provide copies of such verbatim minutes to the County Executive and to the County Legislature within 30 days after each such proceeding or meeting has concluded.

§ A14-3. Rules for Planning Department. [Derived from Charter Sec. 1310]

The Planning Commission by resolution shall adopt rules to govern the administration and functioning of the Planning Department.

§ A14-4. Quorum for Planning Commission. [Derived from Charter Sec. 1311]

A majority of the total membership of the Planning Commission shall constitute a quorum thereof.

§ A14-5. Required vote for action. [Derived from Charter Sec. 1312]

Except as provided in §§ A14-10, A14-11 and A14-21, resolutions of the Planning Commission shall be adopted by a vote of not less than a majority of the total membership of the Commission.

§ A14-6. Annual report required. [Derived from Charter Sec. 1315]

A. The Planning Commission shall make an annual report to the County Legislature and the County Executive on or before February 15 of each year.

B. The annual report shall contain:

- (1) A report on the activities of the Commission, including its zoning and subdivision review actions.
- (2) A survey of conditions in the county, including population density and movement; housing conditions; conservation, parks and recreation; employment and industrial conditions; water resources, pollution and sewers; transportation; and communications.

C. Reports issued by the Commission during the year may be incorporated by reference or summarized in the annual report.

§ A14-7. Preparation of Comprehensive Plan. [Derived from Charter Sec. 1316, as amended 11-25-1980 by L.L. No. 30-1980]

The Planning Commission shall propose a Comprehensive Plan for Suffolk County, which shall include a survey of the natural, scenic, aesthetic and historical resources and ecological systems of Suffolk County and their state of preservation.

§ A14-8. Public hearings on proposed Comprehensive Plan. [Derived from Charter Sec. 1316(1), as amended 11-25-1980 by L.L. No. 30-1980]

The Planning Commission shall hold at least two public hearings on the Comprehensive Plan it proposes, and a Comprehensive Plan may not be adopted by the Planning Commission until the required hearings have been held.

§ A14-9. Notice of public hearings on Comprehensive Plan. [Derived from Charter Sec. 1316(2), as amended 11-25-1980 by L.L. No. 30-1980]

- A. The Planning Commission shall advertise the date, time and place of its public hearings on the Comprehensive Plan, as required by § A14-8, in the official county newspapers, not less than 30 days before the first hearing. The Planning Commission shall also give other reasonable public notice of the scheduled hearings.
- B. The Planning Commission shall forward a copy of the proposed Comprehensive Plan to the office of the County Executive and to the office of the Clerk of the County Legislature at least 10 days in advance of the scheduled public hearings. It shall also have available a reasonable number of copies of the plan for public examination and shall have summaries thereof for public distribution.

§ A14-10. Final adoption of Comprehensive Plan. [Derived from Charter Sec. 1316(3), as amended 11-25-1980 by L.L. No. 30-1980]

- A. After holding the public hearings required by § A14-8 of this Article and not later than the 31st day of December 1971, the Planning Commission, by resolution of 2/3 of its total membership, shall adopt a Comprehensive Plan for Suffolk County and shall forward a copy of the Comprehensive Plan, as adopted, to the office of the County Executive, the office of the Clerk of the County Legislature, the town and village clerks, the County Clerk and the clerks of the school districts within the county.
- B. The County Legislature shall review the Comprehensive Plan adopted by the Planning Commission and shall, by resolution under Article II of the Charter, adopt that plan, with or without amendments, as the Comprehensive Plan of Suffolk County. The plan shall be used as a guide, when appropriate, but shall not be binding upon the county or its agencies.

§ A14-11. Review and amendment of Comprehensive Plan. [Derived from Charter Sec. 1316(4), as amended 11-25-1980 by L.L. No. 30-1980]

The Planning Commission shall annually review the Comprehensive Plan and may, after public hearings, recommend by resolution that the County Legislature amend the Comprehensive Plan in ways specified in the resolution. Such resolution of the Planning Commission recommending amendment of the Comprehensive Plan may

be passed only by affirmative vote of 2/3 of the total membership of the Planning Commission.

§ A14-12. Recommendations by Planning Commission to municipalities. [Derived from Charter Sec.1321]

The Planning Commission may recommend a comprehensive zoning plan to any town or village in Suffolk County and may make such other recommendations involving the performance of the planning function by towns or villages as the Commission deems appropriate.

§ A14-13. Services by Planning Commission to municipalities. [Derived from Charter Sec. 1322]

The Planning Commission may, on request of any town or village in Suffolk County, furnish the town or village with requested planning services. The Commission may impose such charge for its services as may be authorized by local law.

§ A14-14. Referral of certain municipal zoning actions to Planning Commission. [Derived from Charter Sec. 1323, as amended 12-14-1971 by L.L. No. 28-1972;¹ 3-25-1980 by L.L. No. 10-1980; 4-10-1984 by L.L. No. 7-1984]

- A. [Amended 10-28-1986 by L.L. No. 33-1986; 3-25-1992 by L.L. No.7-1992] Subject to the provisions of § C37-4 of the Charter, each town and village in Suffolk County having jurisdiction to adopt or amend zoning regulations shall, before taking final action, refer to the Planning Commission any zoning regulation to any amendment thereof (hereinafter referred to as "municipal zoning action") which would change the district classification of or the regulations applying to real property lying within one mile of a nuclear power plant or airport or within a distance of 500 feet from:

- (1) The boundary of any village or town;
- (2) The boundary of any existing or proposed county, state or federal park or other recreation area;
- (3) The right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway;

¹Editor's Note: Local Law No. 28-1972 was approved at referendum 11-7-1972.

- (4) Existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines;
- (5) The existing or proposed boundary of any other county, state or federally owned land held or to be held for governmental use; or
- (6) The Atlantic Ocean, Long Island Sound, any bay in Suffolk County or estuary of any of the foregoing bodies of water; or which would change the district classification of or the regulations applying to real property lying wholly or partially within the Suffolk County Pine Barrens Zone as described in §C37-2 of the Charter.

NOTE: Local Law No. 7-1992 also amended §§ A14-15, A14-16, A14-21, A14-22, A14-23 and A14-24 and provided as follows:

Section 1. Legislative provided intent.

This Legislature hereby finds and determines that the fees for applications filed for consideration with the Suffolk County Planning Commission for municipal zoning actions have been increased at a time when delays incurred by the applicants create an undue burden and hardship because such proposed actions become tied up in a bureaucratic nightmare of delay and red tape.

This Legislature further finds and determines that this new financial burden on developers, homeowners, businessmen and builders should at least be mitigated by a corresponding reduction in the time taken for the County Planning Commission to render final determinations on matters referred to it for consideration so that greater predictability and finality can be given to people involved in land use matters.

Therefore, the purpose of this law is to impose an ironclad forty-five-day limitation on County Planning Commission reviews of such matters as variances, special permits, municipal zoning actions and/or subdivision plats, subject to the proviso that failure to act within such a period of time will result in the application being deemed approved as a matter of law as of the conclusion of such forty-five-day period.

Section 3. Applicability.

This law shall apply to any variances, special permits, municipal zoning actions and/or subdivision plats referred to or filed with the Suffolk County Planning Commission on or after July 1, 1992.

- B. The term "proposed," as used in this section, means a capital project specified in the Suffolk County Official Map, whether or not the project has been undertaken. In the absence of a Suffolk County Official Map, duly adopted under the Charter, the term "proposed," as used in this section, means:

- (1) In the case of a county item, an item specified in the capital budget.
- (2) In the case of a state item, an item whose boundaries have been established in accord with state law.
- (3) In the case of a federal item, an item whose boundaries have been established in accord with federal law.

- A. Each municipal zoning action referred to the Planning Commission under this

section shall be accompanied by a full statement on the proposed action. The Planning Commission shall publish guides as to what information should be included in such statement. The Planning Commission shall notify all county departments, offices and agencies as to such actions referred to the Planning Commission under this section. Any county department, office or agency which possesses information related to such municipal zoning action shall immediately (no later than 30 days from referral of the proposed action) forward such information to the Suffolk County Planning Commission. For the purposes of determining when the calculation of the forty-five-day deadline for action set forth in § 14-15 of this article commences, "receipt of a full statement" shall include receipt of the information required under this subsection and shall mean the date of actual receipt of all such information or 30 days, whichever date occurs first. The Planning Commission shall not assume, for the purpose of its deliberations, that the municipal zoning action will be approved by the pertinent town or village. [Amended 3-14-2000 by L.L. No. 5-2000]

NOTE: Local Law No. 5-2000 also provided as follows:

Section 1. Legislative intent.

This Legislature hereby finds and determines that a recent incident regarding a matter referred to the Suffolk County Planning Commission in connection with the proposed development of very environmentally sensitive land raises a concern that pertinent background information in the possession of county officials may not be reaching the Planning Commission before it makes a final determination.

This Legislature also finds and determines that it would be beneficial to secure input and pertinent background information from the widest range of agencies and individuals with regard to matters referred to the Suffolk County Planning Commission in connection with proposed development of environmentally sensitive land before the Planning Commission makes a final determination.

Therefore, the purpose of this law is to formalize a procedure for the dissemination of all pertinent background information to the County Planning Commission before it takes final action on matters within its jurisdiction.

Section 3. Applicability.

This law shall apply to any matters referred to the Suffolk County Planning Commission on or after the effective date of this law.

§ A14-15. Consideration of municipal zoning actions by Planning Commission. [Derived from Charter Sec. 1324, as amended 7-8-1975 by L.L. No. 14-1975; 4-10-1984 by L.L. No. 7-1984; 3-25-1992 by L.L. No. 7-1992 EN²]

- A. Subject to the provisions of §§ A14-20 and A14-21, upon the referral of a municipal zoning action to the Planning Commission, the Commission, within 45 days after receipt of a full statement on the proposed action and after due consideration, may, by resolution, render a report indicating that the proposed action has no significant countywide or intercommunity impact, render a report

²Editor's Note: Local Law No. 7-1992, also amended §§ A14-14, A14-16, A14-21, A14-22, A14-23 and A14-24. See note following § A14-14A.

approving the proposed action without change, render a report recommending changes in the proposed action and approving the proposed action with such changes or render a report disapproving the proposed action. If the action is subject to the provisions of § C37-4 of the Charter, then this forty-five-day period shall commence with the issuance of the Suffolk County Pine Barrens Review Commission report or the expiration of the time period set forth in that section, whichever comes first. If the proposed municipal zoning action is not acted upon by the Planning Commission within said forty-five-day period, then the proposed municipal zoning action, as filed or as referred to said Commission, shall be deemed to have been approved as of the expiration of the forty-five day period. For the purposes of this subsection, "acted upon" shall mean approved, rejected, approved with modifications or approved subject to conditions. [Amended 6-11-1996 by L.L. No. 16-1996]

NOTE: Local Law No. 16-1996 also provided as follows:
Section 1. Legislative intent.

This Legislature hereby finds that pursuant to New York General Municipal Law § 239-m, Subdivision (4)(a), a county planning agency is empowered to render a report indicating that a municipal zoning action has no significant countywide or intercommunity impact.

Accordingly, it is the purpose of this law to amend relevant sections of Article XIV of the Suffolk County Administrative Code to grant the Suffolk County Planning Commission the option to render a report indicating that a municipal zoning action has no significant countywide or intercommunity impact.

- B. In accordance with rules adopted by resolution of the Planning Commission, the Commission may dispense with a report on the proposed action. Under such circumstances, the municipality that referred the proposed action to the Planning Commission may proceed, after 45 days from the date of submission of a full statement, as if the Commission had rendered a report approving the proposed action without change. If the action is subject to the provisions of § C37-4 of the Charter, then this forty-five-day period shall commence with the issuance of the Suffolk County Pine Barrens Review Commission report or the expiration of the time period set forth in that section, whichever comes first. If the proposed municipal zoning action is not acted upon by the Planning Commission within said forty-five-day period, then the proposed municipal zoning action, as filed or as referred to said Commission, shall be deemed to have been approved as of the expiration of the forty-five-day period. For the purposes of this subsection, "acted upon" shall mean approved, rejected, approved with modifications or approved subject to conditions.

§ A14-16. Effect of Planning Commission report on municipal zoning action.
[Derived from Charter Sec. 1325, as amended 4-10-1984 by L.L. No. 7-1984; 3-

25-1992 by L.L. No. 7-1992³ EN]

- A. If the Planning Commission renders a report indicating that the proposed action has no significant countywide or intercommunity impact or renders a report approving a proposed action without a change, the town or village that referred the proposal may adopt it in the ordinary course of municipal business. [Amended 6-11-1996 by L.L. No. 16-1996⁴EN]
- B. If the Planning Commission renders a report recommending changes in a proposed municipal zoning action and approving the action with such changes, the town or village that referred the proposal may, unless § A14-18 or A14-21 applies, amend the proposed action in accordance with the Planning Commission's recommendations and adopt it in the ordinary course of municipal business or decline to adopt any one of the recommendations of the Planning Commission and adopt the action as originally proposed, but only upon an affirmative vote of a majority plus one of the entire membership of the referring body in a resolution that explicitly sets forth its reasons for not adopting the Planning Commission's recommendations.
- C. If the Planning Commission renders a report disapproving a proposed municipal zoning action, the town or village involved may, unless § A14-18 or A14-21 applies, adopt the action as originally proposed, but only upon an affirmative vote of a majority plus one of the entire membership of the referring body in a resolution that explicitly sets forth its reasons for rejecting the Planning Commission's reports.
- D. If the proposed municipal zoning action is not acted upon by the Planning Commission within said forty-five-day period, then the proposed municipal zoning action, as filed or as referred to said Commission, shall be deemed to have been approved as of the expiration of the forty-five-day period. For the purposes of this subsection, "acted upon" shall mean approved, rejected, approved with modifications or approved subject to conditions.

§ A14-17. Content of report by Planning Commission on municipal zoning

³Editor's Note: Local Law No. 7-1992 also amended §§ A14-14, A14-15, A14-21, A14-22, A14-23 and A14-24. See note following § A14-14A.

⁴Editor's Note: See note following § A14-15A.

action. [Derived from Charter Sec. 1326, as amended 4-10-1984 by L.L. No. 7-1984]

In the absence of an objection by a state agency pursuant to § A14-18 or a resolution adopted under § A14-21, a report by the Planning Commission disapproving a municipal zoning action or recommending changes in the action and approving it with such changes shall explicitly state the reasons for the Commission's conclusions. The statement of reasons shall be designed to assist the municipality to form its own judgment as to what action, if any, it should take with respect to the municipal zoning action involved.

§ A14-18. Objections by state agencies to zoning actions referred to Planning Commission. [Derived from Charter Sec. 1327, as amended 4-10-1984 by L.L. No. 7-1984]

- A. A state agency having a statutory responsibility involving air pollution, water pollution or estuarine values may interpose an objection with the County Planning Commission to any proposed zoning action referred to the Commission on the ground that the action is likely to produce water pollution or air pollution or be destructive of estuarine values, except any municipal zoning action which would change the district classification of, or the regulations applying to, real property lying within the Suffolk County Pine Barrens Zone as described in § C37-2 of the Charter.
- B. In a case in which the Planning Commission has received an objection under Subsection A of this section:
 - (1) A proposed municipal zoning action disapproved by the Commission may not be adopted by the town or village that referred the proposed action; and
 - (2) A proposed municipal zoning action approved by the Commission with change may not be adopted by the referring body, except as amended in accordance with the Commission's report.

§ A14-19. Hearing on zoning actions referred to Planning Commission when objections are made by state agency. [Derived from Charter Sec. 1328, as amended 4-10-1984 by L.L. No. 7-1984]

- A. Where an objection to a municipal zoning action is interposed by a state agency pursuant to § A14-18, the Planning Commission shall schedule a hearing on the action and shall give 10 days' written notice to:

- (1) The municipality that referred the action to the Commission.
 - (2) The Council on Environmental Quality established under Article I of the Charter.
 - (3) The state agency that interposed the objection.
 - (4) The party that initiated the proceeding before the municipality involved.
- B. In addition, the Planning Commission shall give such notice to any other municipality that the Commission concludes should be given an opportunity to be heard on the matters.

§ A14-20. Report by Planning Commission on zoning actions to which a state agency has objected. [Derived from Charter Sec. 1329]

- A. In each instance in which a state agency makes an objection pursuant to § A14-18, the Planning Commission shall render a report within 45 days of its receipt of the proposed action involved.
- B. The hearing required to be held under § A14-19 shall be held sufficiently in advance of the date by which the Planning Commission is to render its report under this section to permit full consideration of the views presented at the hearing.
- C. Every report rendered under this section shall include a statement of the Planning Commission's evaluation of the objection interposed by the state agency and a statement of its reasons for approving, disapproving or approving the proposal with recommended changes.

§ A14-21. Zoning provisions applicable in areas within a certain distance from municipal boundaries. [Derived from Charter Sec. 1330; amended 3-25-1992 by L.L. No. 7-1992⁵ EN; 3-14-2000 by L.L. No. 5-2000⁶EN]

⁵Editor's Note: Local Law No. 7-1992 also amended §§ A14-14, A14-15, A14-16, A14-22, A14-23 and A14-24. See note following § A14-14A.

⁶Editor's Note: See note following § A14-14C.

- A. In addition to the other provisions of this article concerning municipal zoning actions, no zoning ordinance, nor any amendment of a zoning ordinance, passed by any town or village in the county relating to any portion of the said town or village within 500 feet of a town or village boundary shall take effect in respect to such portion of said town or village until said ordinance or amendment has been submitted to and approved by the County Planning Commission. On the submission to it of said ordinance or amendment, the County Planning Commission shall promptly give written notice thereof to the Clerk of any town or village adjacent to the area which is the subject of said ordinance or amendment. The ordinance or amendment shall be deemed to have been approved unless, within 45 days after the same has been filed with the County Planning Commission, a municipality adjoining the boundary involved interposes an objection to the zoning ordinance or an amendment to the zoning ordinance within 20 days of the date that the ordinance or amendment has been filed with the County Planning Commission and a resolution disapproving it is adopted by a two-thirds vote of such Commission after a public hearing thereon. If the proposed municipal zoning action is not acted upon by the Planning Commission within the forty-five-day period set forth in § A14-15A of this chapter, then the proposed municipal zoning action, as filed or as referred to said Commission, shall be deemed to have been approved as of the expiration of the forty-five-day period. For the purposes of this subsection, "acted upon" shall mean approved, rejected, approved with modifications or approved subject to conditions. The County Planning Commission shall give at least seven days' prior written notice of such hearing to the Clerk of any town or village adjacent to the area which is the subject of said ordinance or amendment. The Planning Commission shall notify all county departments, offices and agencies as to each such zoning ordinance or amendment referred to the Planning Commission under this section. Any county department, office or agency which possesses information related to such zoning ordinance or amendment shall immediately (no later than 30 days from submission of the ordinance or amendment) forward such information to the Suffolk County Planning Commission. The Planning Commission shall not assume, for the purpose of its deliberations, that the zoning ordinance or amendment will be approved by the pertinent town or village.
- B. For the purposes of determining when the calculation of the forty-five-day deadline for action set forth in § A14-15 of this article and Subsection A of this section commences, "receipt of a full statement" shall include receipt of the information required under this article and shall mean the date of actual receipt of all such information or 30 days, whichever date occurs first.

§ A14-22. Certain special permits being considered by municipal agencies to be referred to Planning Commission. [Derived from Charter Sec. 1331, as amended 12-14-1971 by L.L. No. 28-1972;⁷EN 3-28- 1980 by L.L. No. 10-1980; 4-10-1984 by L.L. No. 7-1984]

- B. [Amended 10-28-1986 by L.L. No. 33-1986; 3-25-1992 by L.L. No. 7-1992⁸EN] Each town and village having jurisdiction to issue special permits pursuant to zoning regulations shall, before taking final action, refer to the Planning Commission any application for a special permit which would affect any real property within one mile of a nuclear power plant or airport or within a distance of 500 feet from:

- (1) The boundary of any village or town;
- (2) The boundary of any existing or proposed county, state or federal park or other recreation area;
- (3) The right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway;
- (4) Existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines;
- (5) The existing or proposed boundary of any other county, state or federally owned land held or to be held for governmental use; or
- (6) The Atlantic Ocean, Long Island Sound, any bay in Suffolk County or estuary of any of the foregoing bodies of water; or

which would affect real property lying wholly or partially within the Suffolk County Pine Barrens Zone as described in § C37-2 of the Charter.

- B. The term "special permit" shall be deemed to include any special permit, use permit, exception or other special authorization, which a board of appeals,

⁷Editor's Note: Local Law No. 28-1972 was approved at referendum 11-7-1972.

⁸Editor's Note: Local Law No. 7-1992 also amended §§ A14-14, A14-15, A14-16, A14-21, A14-23 and A14-24. See note following § A14-14A.

planning board or legislative body is authorized to issue under the provisions of any zoning ordinance.

C. The term "proposed," as used in this section, means a capital project specified in the Suffolk County Official Map, whether or not the project has been undertaken. In the absence of a Suffolk County Official Map, duly adopted under the Charter, the term "proposed," as used in this section, means:

- (1) In the case of a county item, an item specified in the capital budget.
- (2) In the case of a state item, an item whose boundaries have been established in accord with state law.
- (3) In the case of a federal item, an item whose boundaries have been established in accord with federal law.

D. Each zoning ordinance or amendment referred to the Planning Commission under this section shall be accompanied by a full statement on the proposed application. The Planning Commission shall publish guides as to what information should be included in such statement. The Planning Commission shall notify all county departments, offices, and agencies as to such applications referred to the Planning Commission under this section. Any county department, office, or agency which possesses information related to such application for a special permit shall immediately (no later than 30 days from referral of the application) forward such information to the Suffolk County Planning Commission. For the purposes of determining when the calculation of the forty-five-day deadline for action set forth in § A14-15 of this article and Subsection E(4) of this section commences, "receipt of a full statement" shall include receipt of the information required under this subsection and shall mean the date of actual receipt of all such information or 30 days, whichever date occurs first. The Planning Commission shall not assume, for the purpose of its deliberations, that the special permit will be granted by the pertinent town or village. [Added 3-14-2000 by L.L. No. 5-2000⁹ ¹⁰EN,EN]

D. [Amended 3-25-1992 by L.L. No. 7-1992¹¹EN] The provisions of this article, except § A14-21, concerning municipal zoning actions shall apply to applications for special permits referred to the Planning Commission in accordance with this section:

- (1) If the Planning Commission renders a report indicating that the proposed action has no significant countywide or intercommunity impact or renders a report approving an application for a special permit without any change, then the town or village that referred the application may approve it in the ordinary course of municipal business. [Amended 6-11-1996 by L.L. No. 16-1996¹²EN]
- (2) If the Planning Commission renders a report recommending changes in a proposed application for a special permit and approving the action with such changes, the town or village that referred the application may, unless § A14-18 or A14-21 applies, amend the proposed special permit in accordance with the Planning Commission's recommendation and approve it in the ordinary course of municipal business; or, decline to adopt any one of the recommendations of the Planning Commission and approve the special permit as originally applied for, but only upon an affirmative vote or a majority plus one of the entire membership of the referring body in a resolution that explicitly sets forth its reasons for not approving the Planning Commission's recommendations.
- (3) If the Planning Commission renders a report disapproving an application for a special permit, the town or village involved may, unless § A14-18 or A14-21 applies, approve the application as originally proposed, but only upon an affirmative vote of a majority plus one of the entire membership of the referring body in a resolution that explicitly set forth its reasons for rejecting the Planning Commission's report.
- (4) If the application for a special permit is not acted upon by the Planning Commission within the forty-five-day period set forth in § A14-15A of this chapter, then the application for a special permit, as filed or as referred to

⁹Editor's Note: Pursuant to this local law, former Subsection D was renumbered as Subsection E.

¹⁰Editor's Note: See note following § A14-14C.

¹¹Editor's Note: Local Law No. 7-1992 also amended §§ A14-14, A14-15, A14-16, A14-21, A14-23 and A14-24. See note following § A14-14A.

¹²Editor's Note: See note following § A14-15A.

said Commission, shall be deemed to have been approved as of the expiration of the forty-five-day period. For the purposes of this subsection, "acted upon" shall mean approved, rejected, approved with modifications or approved subject to conditions.

§ A14-23. Certain variances being considered by municipal agencies to be referred to Planning Commission. [Derived from Charter Sec. 1332, as amended 12-14-1971 by L.L. No. 28-1972¹³; EN 3-25-1980 by L.L. No. 10-1980; 4-10-1884 by L.L. No. 7-1984]

A. [Amended 10-28-1986 by L.L. No. 33-1986; 3-25-1992 by L.L. No. 7-1992¹⁴EN] Subject to the Subsection D of this section, each town and village in Suffolk County having jurisdiction to issue variances shall, before taking final action, refer to the Planning Commission any application for a variance which would affect any real property lying within one mile of a nuclear power plant or airport or within a distance of 500 feet from:

- (1) The boundary of any village or town;
- (2) The boundary of any existing or proposed county, state or federal park or any other recreation area;
- (3) The right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway;
- (4) Existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines;
- (5) The existing or proposed boundary of any other county, state or federally owned land held or to be held for governmental use; or
- (6) The Atlantic Ocean, Long Island Sound, any bay in Suffolk County or estuary of any of the foregoing bodies of water; or which would affect any real property lying wholly or partially within the Suffolk County Pine

Barrens Zone as described in § C37-2 of the Charter.

B. The term "proposed," as used in this section, means a capital project specified in the Suffolk County Official Map, whether or not the project has been undertaken. In the absence of a Suffolk County Official Map, duly adopted under the Charter, the term "proposed," as used in this section, means:

- (1) In the case of a county item, an item specified in the capital budget.
- (2) In the case of a state item, an item whose boundaries have been established in accord with state laws.
- (3) In the case of a federal item, an item whose boundaries have been established in accord with federal law.

C. Each application for a variance referred to the Planning Commission under this section shall be accompanied by a full statement on the proposed application. The Planning Commission shall publish guides as to what information should be included in such statement. The Planning Commission shall notify all county departments, offices and agencies as to such application referred to the Planning Commission under this section. Any county department, office or agency which possesses information related to such application for a variance shall immediately (no later than 30 days from referral of the application) forward such information to the Suffolk County Planning Commission. For the purposes of determining when the calculation of the forty-five-day deadline for action set forth in § A14-15 of this article and Subsection D(4) of this section commences, "receipt of a full statement" shall include receipt of the information required under this subsection and shall mean the date of actual receipt of all such information or 30 days, whichever date occurs first. The Planning Commission shall not assume, for the purpose of its deliberations, that the variance will be granted by the pertinent town or village. [Added 3-14-2000 by L.L. No. 5-2000¹⁵ ¹⁶EN,EN]

¹³Editor's Note: Local Law No. 28-1972 was approved at referendum 11-7-1972.

¹⁴Editor's Note: Local Law No. 7-1992 also amended §§ A14-14, A14-15, A14-16, A14-21, A14-22 and A14-24. See note following § A14-14A.

¹⁵Editor's Note: Pursuant to this local law, former Subsections C and D were renumbered as Subsections D and E, respectively.

¹⁶Editor's Note: See note following § A14-14C.

D. [Amended 3-25-1992 by L.L. No. 7-1992¹⁷ EN] Subject to Subsection E of this section, the provisions of this article, except § A14-21, concerning municipal zoning actions shall apply to applications for variances referred to the Planning Commission in accordance with this section:

- (1) If the Planning Commission renders a report indicating that the proposed action has no significant countywide or intercommunity impact or renders a report approving an application for a variance without any change, then the town or village that referred the application may approve it in the ordinary course of municipal business. [Amended 6-11-1996 by L.L. No. 16-1996¹⁸ EN]
- (2) If the Planning Commission renders a report recommending changes in a proposed application for a variance and approving the action with such changes, the town or village that referred the application may, unless § A14-18 or A14-21 applies, amend the proposed variance in accordance with the Planning Commission's recommendations and approve it in the ordinary course of municipal business or decline to adopt any one of the recommendations of the Planning Commission and approve the variance as originally applied for, but only upon an affirmative vote of a majority plus one of the entire membership of the referring body in a resolution that explicitly sets forth its reasons for not approving the Planning Commission's recommendations.
- (3) If the Planning Commission renders a report disapproving an application for a variance, the town or village involved may, unless § A14-18 or A14-21 applies, approve the application as originally proposed, but only upon an affirmative vote of a majority plus one of the entire membership of the referring body in a resolution that explicitly sets forth its reasons for rejecting the Planning Commission's report.
- (4) If the application for a variance is not acted upon by the Planning Commission within the fortyfive- day period set forth in § A14-15A of this chapter, then the proposed application for a variance, as filed or as referred

to said Commission, shall be deemed to have been approved as of the expiration of the forty-five-day period. For the purposes of this subsection, "acted upon" shall mean approved, rejected, approved with modifications or approved subject to conditions.

E. The Planning Commission, by resolution, may adopt rules setting forth the classes of variance applications that need not be submitted to it for consideration. [Amended 3-25-1992 by L.L. No. 7-1992¹⁹ EN]

§ A14-24. Certain subdivision plats being considered by municipal agencies to be referred to Planning Commission. [Derived from Charter Sec. 1333, as amended 12-14-1971 by L.L. No. 28-1972²⁰; EN 5-8-1979 by L.L. No. 12-1979; 3-25-1980 by L.L. No. 10-1980; 4-10-1984 by L.L. No. 7-1984]

A. [Amended 3-25-1992 by L.L. No. 7-1992^{EN}] Each municipal agency authorized by a municipal legislative body to approve plats showing lots, blocks or sites, with or without streets or highways, or the development of plats entirely or partly undeveloped and which have been filed in the office of the Clerk of the county in which such plat is located, prior to the appointment of such Planning Board and the grant to such Board of the power to approve plats, shall refer to the Planning Commission any plat of real property lying within one mile of a nuclear power plant or airport or within a distance of 500 feet from:

- (1) The boundary of any village or town;
- (2) The boundary of any existing or proposed county, state or federal park or other recreation area;
- (3) The right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway;
- (4) Existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines;

¹⁷Editor's Note: Local Law No. 7-1992 also amended §§ A14-14, A14-15, A14-15, A14-16, A14-21, A14-22 and A14-24. See note following § A14-14A.

¹⁸Editor's Note: See note following § A14-15A.

¹⁹Editor's Note: Local Law No. 7-1992 also amended §§ A14-14, A14-15, A14-16, A14-21, A14-22 and A14-24. See note following § A14-14A.

²⁰Editor's Note: Local Law No. 28-1972 was approved at referendum 11-7-1972.

- (5) The existing or proposed boundary of any other county, state or federally owned land held or to be held for governmental use;
- (6) The Atlantic Ocean, Long Island Sound, any bay in Suffolk County or estuary of any of the foregoing bodies of water; or real property lying wholly or partially within the Suffolk County Pine Barrens Zone as described in § C37-2 of the Charter.
- B. The term "proposed," as used in this section, means a capital project specified in the Suffolk County Official Map, whether or not the project has been undertaken. In the absence of the Suffolk County Official Map, duly adopted under the Charter, the term "proposed," as used in this section, means:
- (1) In the case of a county item, an item specified in the capital budget.
 - (2) In the case of a state item, an item whose boundaries have been established in accord with state law.
 - (3) In the case of a federal item, an item whose boundaries have been established in accord with federal law.
- C. Each subdivision plat referred to the Planning Commission under this section shall be accompanied by a full statement on the proposed plat. The Planning Commission shall publish guides as to what information should be included in such statement. The Planning Commission shall notify all county departments, offices and agencies as to such actions referred to the Planning Commission under this section. Any county department, office or agency which possesses information related to such application for a subdivision plat shall immediately (no later than 30 days from submission of the subdivision plat) forward such information to the Suffolk County Planning Commission. For the purposes of determining when the calculation of the forty-five-day deadline for action set forth in § A14-15 of this article and Subsection E(4) of this section commences, "receipt of a full statement" shall include receipt of the information required under this subsection and shall mean the date of actual receipt of all such information or 30 days, whichever date occurs first. The Planning Commission shall not assume, for the purpose of its deliberations, that the proposed subdivision plat will be approved by the pertinent town or
- village. [Added 3-14-2000 by L.L. No. 5-2000²¹²² EN,EN]
- D. This section shall apply to any municipal review of a condominium pursuant to § 339-f of the Real Property Law of the State of New York. [Amended 3-25-1992 by L.L. No. 7-1992²³EN]
- E. [Amended 3-25-1992 by L.L. No. 7-1992²⁴;EN 6-11-1996 by L.L. No. 16-1994²⁵EN] The provisions of this article, except § A14-21, concerning municipal zoning actions, shall apply to plats referred to the Planning Commission in accordance with this section.
- (1) If the Planning Commission renders a report indicating that the proposed action has no significant countywide or intercommunity impact or renders a report approving an application for a proposed plat without any change, then the town or village that referred the application may approve it in the ordinary course of municipal business.
 - (2) If the Planning Commission renders a report recommending changes in a proposed application for a proposed plat and approving the application with such changes, the town or village that referred the application may, unless § A14-18 or A14-21 applies, amend the proposed plat in accordance with the Planning Commission's recommendations and approve it in the ordinary course of municipal business or decline to adopt any one of the recommendations of the Planning Commission and approve the proposed plat as originally applied for but only upon an affirmative vote of a majority plus one of the entire membership of the referring body in a resolution that explicitly sets forth its reasons for not approving the

²¹Editor's Note: Pursuant to this local law, former Subsections C and D were renumbered as Subsections D and E, respectively.

²²Editor's Note: See note following § A14-14C.

²³Editor's Note: Local Law No. 7-1992 also amended §§ A14-14, A14-15, A14-16, A14-21, A14-22 and A14-23. See note following A14-14A.

²⁴Editor's Note: Local Law No. 7-1992 also amended §§ A14-14, § A14-15, A14-16, A14-21 and A14-23. See now following § A14-14A.

²⁵Editor's Note: See note following § A14-15A.

Planning Commission's recommendations.

- (3) If the Planning Commission renders a report disapproving an application for a proposed plat, the town or village involved may, unless § A14-18 or A14-21 applies, approve the application as originally proposed but only upon an affirmative vote of a majority plus one of the entire membership of the referring body in a resolution that explicitly set forth its reasons for rejecting the Planning Commission's report.
- (4) If the application for a plat is not acted upon by the Planning Commission within the forty-five day period set forth in § A14-15A of this chapter, then the proposed application for a plat as filed or as referred to said Commission shall be deemed to have been approved as of the expiration of the forty-five day period. For the purposes of this subsection, "acted upon" shall mean approved, rejected, approved with modifications or approved subject to conditions.²⁶ EN

§ A14-25.²⁷EN Application fees for certain matters referred to Planning Commission. [Added 11-4-1991 by L.L. No. 30-1991]

NOTE: Local Law No. 30-1991 also provided as follows:
Section 1. Legislative intent.

This Legislature hereby finds and determines that the Suffolk County Department of Planning incurs a variety of administrative costs in connection with processing certain applications which are referred by the towns to the Suffolk County Planning Commission and Pine Barrens Review Commission.

This legislature also finds that, although the towns referring such applications charge varying fees for processing the applications, the county does not receive a share of the town's fee, nor does it charge its own fee.

Accordingly, it is the intent of this law to direct and empower the Suffolk County Department of Planning to assess an application fee to defray a portion of the administrative costs the county incurs in connection with processing such applications.

- A. [Amended 6-26-1995 by L.L. No. 20-1995] Each municipal zoning action referred to the Planning Commission pursuant to § 14-14 of this Article and each subdivision plat referred to the Planning Commission pursuant to § 14-24 shall be accompanied by an application fee. The amount of such fee shall be \$50 for each municipal zoning action so referred to the Planning Commission. This fee shall be waived for municipal zoning actions where the Commission shall issue a report that the proposed action has no significant county-wide or intercommunity impact.

- (1) Fees for all changes of zone, for special exception permits and/or Planning Board and Board of Zoning Appeal actions on undeveloped lands shall be \$100 up to 10 acres, plus \$10 for each acre or fraction thereof over 10 acres as set forth more particularly in Exhibit A attached hereto and made a part hereof.²⁸ EN

NOTE: Local Law No. 20-1995 also provided as follows:

Section 1. Legislative intent.

This Legislature hereby finds and determines that Local Law 30-1991 amended the Suffolk County Administrative Code by the addition of a new § 14-25 which authorized the Suffolk County Department of Planning to charge application fees in connection with the review of applications for municipal zoning actions referred to the Suffolk County Planning Commission.

This Legislature further finds and determines that the application fees of \$50 for municipal zoning actions imposes an undue hardship and financial burden upon residents of Suffolk County in those cases where the municipal zoning actions have no significant county-wide or intercommunity impact.

Therefore, the purpose of this law is to waive the administration fees for those municipal zoning activities which have no significant county-wide or intercommunity impact.

Section 3. Applicability.

This law shall apply to matters referred to the Planning Commission on or after the effective date of this law.

- B. All fees collected pursuant to this section shall be allocated to the General Fund of the County of Suffolk and shall be utilized to offset administrative costs of the Department of Planning.
- C. The Commission of the Department of Planning is hereby authorized and empowered to issue and promulgate such rules and regulations as it may deem necessary and sufficient to implement the provisions of this section.

²⁶Editor's Note: Former § A14-25, Overall Economic Development Program Committee, which followed this section, was repealed 5-10-1988 by L.L. No. 17-1988. That local law also renumbered former §§ A14-26 and A14-27 as §§ A14-25 and A14-26, respectively. See also Art. XXXV of the Charter, Department of Economic Development.

²⁷Editor's Note: Former § A14-25, Suffolk County Transportation Advisory Board, derived from Charter Sec. 1336, as added 11-25-1980 by L.L. No. 30-1980, was redesignated as § A8-7 by L.L. No. 5-1990, adopted 12-12-1989.

²⁸Editor's Note: Exhibit A is located in Subsection D of this section.

D. Exhibit A: zoning fees. [Added 6-26-1995 by L.L. No. 20-1995²⁹EN]

Zoning Actions		Existing	Proposed
Before town/village boards		\$50	\$100 up to 10 acres, plus \$10 for each acre or fraction thereof over 10 acres
For special exception(s) /permit(s)			
	On developed lands and for one-/two-family and associated purposes	\$50	\$50
	On undeveloped lands for all other purposes excluding one-two-family and associated purposes	\$50	\$100 up to 10 acres, plus \$10 for or each acre or fraction / thereof over 10 acres
	For amendment(s) to zoning ordinance	\$50	\$50
Before Board of Appeal			
	On lands for one-/two-family and associated purposes	\$50	\$50
	On all other lands	\$50	\$100 up to 10 acres, plus \$10 for or each acre or fraction / thereof over 10 acres
Before Planning Boards			
	On developed one- /two-family and associated purposes	\$50	\$50
	On undeveloped lands for all other purposes	\$50	\$100 up to 10 acres, plus \$10 for or each acre or fraction / thereof over 10 acres

NOTE: All unlogged and municipal zoning actions are exempted.

²⁹Editor's Note: See Note after Subsection A of this section.

RECOMMENDED FORM FOR NOTICE OF REFERRAL

Pursuant to Sections A14-14 to A14-23 inclusive of the Suffolk County Administrative Code the (agency involved) of the (Village, Town) of hereby refers the following proposed zoning action to the Suffolk County Planning Commission:

(check one)

- New zoning ordinance
- Amendment of zoning ordinance
- Amendment of zoning map (change of zone)
- Request for zoning variance
- Request for special permit, use permit, exception, or other special authorization

Location of affected land:

Suffolk County Tax Map No.:

within 500 feet of: (check one or more)

- The boundary of any village or town
- The boundary of any existing or proposed county, state or federal park
- The right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway
- The existing or proposed right-of-way of any stream or drainage channel owned by the county for which the county has established channel lines
- The existing or proposed boundary of any other county, state or federally owned land
- The Atlantic Ocean, Long Island Sound, any bay in Suffolk County or estuary of any of the foregoing bodies of water

or within one mile of: (check one or more)

- Nuclear power plant
- Airport

or within the Pine Barrens Zone

- Yes, the proposed zoning action is within the Pine Barrens Zone

COMMENTS:

Date

Signature

Title

Legal Memorandum LU12
FAILURE TO REFER ADOPTION OR AMENDMENT
OF LOCAL ZONING ORDINANCE OR LAW TO COUNTY
RISKS INVALIDATION FOR UP TO SIX YEARS

General Municipal Law Sections 239-m and -n require cities, towns and villages to refer certain actions, such as adoption and amendment of zoning ordinances and comprehensive plans, issuance of special use permits, approval of site plans and subdivision plats to the county planning agency if they apply to property within 500 feet of a municipal boundary, a county or state highway or other property listed in the statutes. The statutes authorize municipalities and counties to agree that certain of the actions listed are of local concern, rather than county-wide, and need not be referred to the county. If an action is subject to referral, however, an action may be challenged on the grounds that referral was not conducted or conducted improperly, and the courts will not hesitate to invalidate the action. Importantly, failure to refer a covered legislative enactment matter to the county could result in the matter being invalidated for up to six years after it was purportedly enacted.

Unlike other causes of action pertaining to planning and zoning matters, judicial review of a claim that the requirements of §§239 -m and -n have not been followed is not a matter of reviewing the record for substantial evidence to support a referring body's decision, but simply whether the referral was made in accordance with the statutory procedures. If not, the action will be invalidated. This is so because failure to properly refer is a "jurisdictional defect which renders the enactment invalid" (*Caruso v. Town of Oyster Bay*, 172 Misc.2d 93, 656 N.Y.S. 2d 809, affirmed as modified 250 A.D.2d 639, 672 N.Y.S. 2d 418 [1997]).

Section 239 -m requires that both legislative actions (adopting or amending a zoning law) and administrative actions (e.g., site plan review, variance approvals, etc) be referred to the county. The enabling statutes provide a thirty day statute of limitations for administrative actions (i.e., Town Law §§267-c [1], 274-a [11], and 274-b [9] require an Article 78 proceeding to be filed within 30 days of the filing of a decision on a variance, site plan review and special use permit, respectively), but not for legislative actions. There is no stated time period in the city, town or village enabling laws within which an action must be brought. Therefore, the time period within which to bring an Article 78 proceeding against a municipality regarding the procedures used to enact legislation is four months (CPLR §217; *Save the Pine Bush, Inc. v. City of Albany*, 70 N.Y. 2d 193, 518 N.Y.S. 2d 943 [1987]), but where a proceeding is brought alleging the validity of a legislative act based upon failure to refer to the county ("not a mere procedural irregularity but is rather a jurisdictional defect involving the validity of a legislative act" *Ernalex Const. Realty Corp. v. City of Glen Cove*, 256 A.D. 2d 336, 681 N.Y.S. 2d 296 [2d Dept 1998]), such a proceeding is a request for a declaratory action rather than an Article 78 proceeding.

A declaratory judgement action, not an Article 78 proceeding, is the method for challenging the validity of a legislative action (*Kamhi v. Yorktown*, 141 A.D. 2d 607, 529 N.Y.S. 2d 528, *aff'd* 74 N.Y. 2d 423, 548 N.Y.S. 2d 144 [1989]). In both *Ernalex Const. Realty Corp. v. City of Glen Cove*, *Id.*, and *Janiak v. Town of Greenville*, 203 A.D. 329, 610 N.Y.S. 2d 286 (2d Dept 1994), the Appellate Division held that because a declaratory judgement action, rather than an Article 78 proceeding, was the proper vehicle for challenging the validity of a local zoning law, a six-year statute of limitations was applicable (CPLR §213).

Suffolk County Planning Commission Advisory News



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MORATORIUM ON DEVELOPMENT

A moratorium on development is a local law or ordinance that **suspends the right of property owners to obtain development approvals** while the community takes time to consider, draft and adopt land use plans or rules to respond to new or changing circumstances not adequately dealt with by its current laws.

Development moratoria may be general or specific. A **general moratorium** imposes a ban on all development in the community. Hardship exemptions may be provided and certain actions may be exempted.

A **specific moratorium** may prevent development approvals in a particular geographic area or of a certain type. Moratoria have suspended the right to process proposals relating to a specific land use. For example, they have been enacted to affect only the construction of docks, for instance, or communications antennas.

PURPOSE

A **moratorium on development preserves the status quo for a reasonable time** while the municipality develops and adopts a land use strategy to respond to new or recently perceived problems. The moratorium prevents developers and property owners from rushing to develop their land under current land use rules that the community is in the process of changing. By so doing, it helps to accomplish the purpose of the new rules by giving them the broadest possible applicability and preventing development that is inconsistent with them.

AUTHORITY

There is no specific statutory authorization to adopt a moratorium on development. The courts have pointed to two separate sources of authority, while consistently confirming the municipal power to enact moratoria.

Communities are implicitly authorized to take those actions they deem reasonable to encourage the most appropriate use of the land throughout the municipality. In light of new or changing circumstances, a moratorium may be necessary to allow the community to achieve this express purpose of zoning and land use planning.

Some courts have held that a **development moratorium is a form of zoning**, implying that it is part of the statutorily delegated power to adopt and amend zoning provisions. Alternatively, a community's authority to adopt a moratorium has been referred to as a "police power" measure appropriate to prevent conditions that threaten the community's health, safety, welfare and morals.

IMPLEMENTATION

A **moratorium is, from one perspective, the most extreme land use action that a municipality can take because it suspends completely the rights of owners to use their property**. Seen in this light, it is advisable to precede the adoption of a moratorium by **findings** that confirm the necessity of this action. What are the **conditions** that mandate the imposition of a moratorium? Are no other **alternatives**, less burdensome on property rights, available? Why are the existing land use plans and ordinances not adequate? What **recent circumstances** have occurred that justify the adoption of the moratorium? How serious and **urgent** are these circumstances? What **hard evidence** is there to document the necessity of the moratorium?

When adopting a moratorium, the municipality may set forth how the situation that gave rise to the moratorium is to be dealt with. What local bodies are responsible? What studies are to be done? What resources are being made available to complete those studies? Can deadlines be established for various steps in the process? **The more specific and legitimate this plan and timetable are, the more likely the moratorium will be found to be reasonable.**

Based on this action plan and timetable, a date can be selected for the expiration of the moratorium. A moratorium can be extended if the timetable cannot be met; however, the reasonableness of the action is enhanced by setting a date for expiration that is legitimate under the circumstances.

A moratorium should be adopted in conformance with all procedures required of any zoning or land use action, including notice, hearing, the formalities of adoption and filing. While a moratorium does not require an environmental review under the State Environmental Quality Review Act, if it affects adjacent municipalities or county facilities, it may be subject to review by those governments before it can be formally adopted. **The Suffolk County Planning Commission considers suspension of any portion of a Zoning Code to be a "municipal zoning action" requiring review by the Commission.**

LIMITATIONS AND CONCERNS

Since development moratoria affect property rights so severely, they must be reasonable or run the risk of being challenged, voided by the courts and, perhaps, resulting in a damage award against the locality. Reasonableness is best established if the community can document that it is facing a true emergency. Several court decisions sustaining moratoria refer to the "dire necessity" that justifies them. Such a necessity arises not only when health and safety risks are confronted, but also when the community is facing a significant new land use problem that its existing regulations were not designed to handle.

For the same reason, when specific action plans and timetables are established to deal with the necessity or emergency, the reasonableness of the locality's moratorium

is demonstrated. Similarly, a community needs to make reasonable progress in carrying out the plan and adhering to the schedule so its actions are seen to be reasonable. Moratoria that have been extended for up to three years have been sustained by a showing that the community was diligently pursuing its plan and timetable and shorter moratoria have been voided because the community was making little or no progress. In the same way, the plan must be calculated to deal directly with the necessity or emergency at hand; otherwise, its reasonableness may be questioned.

Moratoria do not apply to approved projects where the developer has completed construction or has completed substantial construction in reliance on a development approval or permit. Such developers are said to have vested rights in their permits and to be immune from changes in applicable regulations. Other property owners, who have made less progress, are said to have no legitimate or enforceable expectation that the rules applicable to the development of their land might not change in the interest of protecting the public health, safety or welfare.

CITATIONS:

1. In *Duke v. Town of Huntington*, 153 Misc. 2d 521, 581 N.Y.S.2d 978 (Sup.Ct.,Suffolk Co., 1991), the property owner challenged a moratorium prohibiting construction of any docks. The court held the moratorium unreasonable under the circumstances.
2. In *B & L Development Corp. v. Town of Greenfield*, 146 Misc. 2d 638, 551 N.Y.S.2d 734 (1990), the court struck down a one year moratorium on all building permits and land use approvals including subdivision and site plans. **The court found that in adopting the moratorium, the Town had failed to notify the county government** under General Municipal Law § 239-m and adjacent communities under Town Law § 264 and to follow its own requirements for adopting zoning provisions.
3. In *Cellular Telephone Co. v. Tarrytown*, 209 A.D.2d 57, 624 N.Y.S.2d 170, (2nd Dep't, 1995) the court struck down a moratorium prohibiting the construction of cellular antenna.

SOURCE:

Local Leader's Guide to Land Use Practice, Second Edition (In Progress), Series III: Innovative Tools and Techniques, Issue 1: Moratorium on Development, <http://www.law.pace.edu/landuse/morato~1.html>, downloaded 4/23/98.